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# In the Supreme Court of the United States

OCTOBER TERM, 1970

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A & S ELECTRONIC DIE CORP. and A & S STEEL RULE DIE CORP., PETITIONERS

*v.*

NATIONAL LABOR RELATIONS BOARD

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

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## BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A12) is reported at 423 F. 2d 218. The Board's decision and order (Pet. App. A18-A49) are reported at 172 NLRB No. 168.

### JURISDICTION

The judgment of the court of appeals was entered on May 4, 1970 (Pet. App. A13-A17). On August 3, 1970, Mr. Justice Brennan extended the time for fil-

ing a petition for a writ of certiorari to August 25, 1970. The petition was filed on August 4, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTION PRESENTED

Whether substantial evidence supports the findings of the National Labor Relations Board that petitioners violated the National Labor Relations Act by promising an employee a raise if he would abandon his union affiliation, interrogating an employee concerning his union membership and activities, supporting the organizational efforts of one union, and reducing the overtime hours of an employee because of his union activities.

## STATUTES INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth in the petition (Pet. 2-4).

## STATEMENT

A & S Electronic Die Corp. and A & S Steel Rule Die Corp. (collectively herein the Company) are affiliated companies which are operated as a single business enterprise. On March 2, 1967, Israel Cruz, one of the Company's four truck drivers, signed a card authorizing Local 807 of the International Brotherhood of Teamsters to be his bargaining representative. In the next few days, he also secured

the signatures of two of his fellow drivers, Andrew Reynolds and Juan Rivera (A. 22; 102-103).[1] He turned the cards over to the Teamsters which, on March 7, filed a petition with the National Labor Relations Board for an election in a unit limited to the four drivers. At the same time, the Teamsters wrote to Walter Solmsen, the Company's president, requesting recognition as collective bargaining agent for the drivers (A. 22; 103, 164, 166).

The next day Solmsen summoned Cruz to his private office and told him that he had received the letter from the Teamsters (A. 22; 103-104). He stated that he did not want unions in his shop and offered Cruz a $10 a week raise if he would "forget the union" (A. 22; 104). When Cruz rejected the offer, Solmsen stated that, if the men wanted a union, he would not fight it (A. 22; 104). The three other drivers—Reynolds, Rivera, and John Sojourner—then arrived at Solmsen's office. He told them that the Teamsters claimed to represent a majority and asked if this were true. Reynolds and Rivera both admitted that they had signed authorization cards for the Teamsters, but Sojourner said that he had not (A. 22-24; 166, 171-172).

About a week later, organizers of Local 106 of the International Production, Service and Sales Union appeared at the Company's truck bay during the lunch hour and urged the approximately dozen employees there to sign with that union. Also present were

[1] "A." refers to the portions of the record printed as an appendix to the parties' briefs in the court below.

Elliot Klein, the Company's purchasing clerk, and Kurt Lobbenberg, its shipping foreman, both of whom were found by the Board to be supervisors within the meaning of Section 2(11) of the Act. Lobbenberg passed out authorization cards for Local 106, while Klein urged the employees to sign, stating "it is a good union, sign the card" and "the boss won't mind" (A. 29; 53-55; 62, 66, 70, 73-74, 78-80, 86-87, 93-95, 96-97).

Shortly thereafter, President Solmsen summoned employee Robert Geller to the Company's office and told Geller that "the company was having union difficulties" and that "he was very unhappy about this state of affairs." He then asked Geller if he would sign a Local 106 card "as a favor." Geller declined, saying that Solmsen "had handled the thing so badly with people like Elliot and Kurt publicly asking people to support this union" that he did not want to become associated with it. Later, however, Geller told Solmsen that he would not oppose Local 106 (A. 29-30; 55-57).

Not long after this conversation, Geller became active in the organizational efforts at the Company of District 65 of the Retail, Wholesale and Department Store Union, AFL-CIO. When Solmsen became aware of this, he called Geller into his office again and asked him why he was "involved" with District 65 since he had said that he would not oppose Local 106. Geller replied that he felt District 65 would be the best union for the employees. Solmsen ended the conversation by telling Geller that "really nothing would change if 106 did get in the shop" and that Geller's

"personal position wouldn't change" (A. 30; 57).

Prior to the receipt by Solmsen of the letter from the Teamsters, both Cruz and Reynolds were assigned substantial overtime work. Following Solmsen's March 8 interviews with the drivers, the overtime of both these employees was reduced to less than one hour per week, while that of Sojourner, the only driver who had not signed a Teamster's authorization card, was significantly greater (A. 24-26; 177-180, 183-184). Rivera, who also signed a Teamsters' authorization card, had received little overtime work prior to March 8 and his situation remained unchanged (A. 26; 181-182).

The Board found that the Company violated Section 8(a)(1) of the Act (interference with or restraint or coercion of employees in the exercise of their right to form a labor organization) by promising Cruz a $10 per week raise if he would abandon his union affiliation and by interrogating Reynolds, Rivera, Sojourner, and Geller concerning their union membership and activities. The Board also found that Company President Solmsen's solicitation of Geller to sign a Local 106 authorization card and the distribution of that union's cards by supervisors Klein and Lobbenberg constituted assistance to Local 106 in violation of Section 8(a)(2) of the Act (interference with formation of a labor organization). Finally, the Board found that the company violated Section 8(a)(3) of the Act (discrimination with regard to employment to encourage or discourage membership in a labor organization) by reducing the overtime hours of Reynolds and Cruz because of their union mem-

bership and activities. (Pet. App. A9, A28, A32, A35, A39, A46-A47.) The Board ordered the Company to cease and desist from the unfair labor practices found and from in any other manner interfering with its employees in the exercise of their rights guaranteed by Section 7 of the Act, and to make whole the employees discriminated against for their loss in overtime pay (Pet. App. A47-A49).

The court of appeals (District Judge Tyler dissenting in part) sustained the Board's findings and conclusions with respect to the unlawful promise of benefit to Cruz, the interrogation of Geller, the illegal assistance to Local 106, and the discriminatory denial of overtime to Reynolds. The court ruled, however, that the purpose of the interrogation of drivers Reynolds, Sojourner, and Rivera was to determine the majority status of the Teamsters and that it was neither threatening nor coercive. The court also reversed the Board with respect to the reduction of Cruz's overtime, holding that his improper use of the Company truck justified the Company's action.[2] (Pet. App. A5-A9.)

## ARGUMENT

Petitioners' contentions that the interrogation of Geller was not coercive, that no benefit was promised to Cruz to discontinue his union activities, and that Reynolds' loss of overtime was not attributable to his union activity present only evidentiary issues

[2] There was some evidence that Cruz had used the Company truck for the transportation of narcotics (Pet. App. A32).

which do not warrant review by this Court, since the court below found there was substantial evidence to support the Board's findings.[3] *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 491. Moreover, the facts summarized in the Statement (*supra*, pp. 2-6) show that there is ample support for those findings.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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AUGUST 1970.

[3] Although the questions presented (Pet. 2) also purport to challenge the Board's finding of illegal assistance to Local 106, there is only passing mention of that question (Pet. 8-9), which also raises only an evidentiary issue.

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